BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

CHASE M. FRY	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,047,798
SCHWAN'S GLOBAL SUPPLY CHAIN, INC.	)	
Respondent	)	
AND	)	
	)	
HARTFORD INSURANCE CO. OF THE MIDWEST	)	
Insurance Carrier	)	

ORDER

Claimant requested review of the January 3, 2012 Award by Administrative Law Judge (ALJ) Bruce E. Moore. The Board heard oral argument on April 3, 2012.

APPEARANCES

James E. Martin, of Overland Park, Kansas, appeared for the claimant. Mickey W. Mosier, of Salina, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award with the exception of Stipulation number 2 from the Award concerning the alleged date of accident and the other references to a June 30, 2009 date of accident. The Employers Report of Accident filed with the Division on July 8, 2009, lists a date of accident of June 29, 2009. The K-WC E-1 Application For Hearing filed with the Division on October 8, 2009, lists a date of accident of June 30, 2009. At the regular hearing on September 7, 2011, the parties discussed a date of accident on June 30, 2009, and this is the alleged date of accident utilized by the ALJ in the Award. At the oral argument before the Board, the parties agreed that the appropriate date of accident in this matter is June 29, 2009.

ISSUES

The Administrative Law Judge found claimant suffered personal injury by accident, arising out of and in the course of his employment resulting in a 5 percent permanent partial impairment of function and a 30 percent work disability. The ALJ awarded claimant a 5 percent permanent partial impairment followed by a 30 percent permanent partial general disability as a consequence of the accident. The ALJ went on to find that respondent is not obligated to pay emergency room expenses incurred on December 12, 2010, May 6, 2011 and August 25, 2011. Additionally, the ALJ determined that respondent should be reimbursed for the medical expenses paid due to the claimant's overdose on August 5, 2009. Respondent was directed to submit the Award to the Director for a determination of the amount to which it may be entitled to be reimbursed from the Workers Compensation Fund for the August 5, 2009 emergency room visit.

The claimant requests review of whether the ALJ erred in failing to award payment of medical bills detailed in Exhibit 1 of the proceedings held before him on September 7, 2011. Claimant argues that the Award should be modified to direct respondent and its insurance carrier to pay all medical costs claimant incurred for care and treatment of the symptoms associated with the headaches in question from and after July 30, 2010. This would include the emergency room visits on December 12, 2010, May 6, 2011 and August 25, 2011. Claimant argues that those medical bills, which are attached to the Transcript of Proceedings and identified as Claimant's Exhibit 1, should be paid as authorized medical treatment. In the alternative, claimant argues that he would be entitled to the $500.00 unauthorized medical allowance contained in K.S.A. 44-510h(b)(2).

Respondent contends that the Award should be affirmed.

FINDINGS OF FACT

Claimant began working for respondent in February 2009 as a relief loader. Claimant's job was to pick up boxes off of a pallet, throw them into a truck and stack them. The boxes weighed 25 pounds and claimant performed this work 12 hours a day. He also operated a forklift during those 12 hours.

On June 29, 2009, while opening a truck to start unloading it, claimant had a portion of the contents of the truck fall on him slamming him against the dock plate.[1] The dock plate is a half inch steel plate that sits down into the trailer so the forklift can be driven back and forth into the truck. Claimant testified that 80 to 100 boxes fell on him and his co-workers had to dig him out. Claimant does not remember being dug out as he lost consciousness. Claimant testified that he was told that he was out for at least 10 minutes.

[1] R.H. Trans. at 20-21.

Claimant testified that although there were others around, no one actually witnessed the accident.

Claimant was checked out by the nursing staff at the facility, was given an aspirin for a headache and sent back to work. Claimant finished his shift and went home. The next morning, claimant woke up with a severe migraine. Claimant did not go to work and instead went to Salina Regional for treatment. He was evaluated and was given Lortab for the pain. Claimant thinks that he was given a CT scan at this time as well. Claimant did not inform respondent that he sought treatment at the hospital until the next day. Respondent sent claimant to the ComCare physician, Dr. James Shafer. Dr. Shafer prescribed pain medication.

Dr. Shafer, was a family physician at ComCare and the physician for Schwan's Global Supply Chain. Dr. Shafer first met with claimant on July 13, 2009, at which time claimant reported that on June 29, 2009, he had some boxes fall on his head and was knocked out for about ten minutes. He had been to the emergency room and received medication, but was still having problems.

Dr. Shafer examined claimant and opined that he had muscle tension headaches secondary to cervical strain and neck strain. Claimant was given some anti-inflammatory medication and pain medication. Claimant failed to keep his next two appointments and was not seen again until July 31, 2009, at which time had a little cervical neck strain with tension headaches. Claimant was instructed to continue with the prescribed treatment and physical therapy was recommended.

On August 5, 2009, claimant had a severe migraine and took a pain pill. When he obtained no relief he took another pill and a little while later he took another one. Eventually claimant took too many pills and ended up in the hospital after he was found unconscious by his mother after ingesting seven Lortab and seven Fioricet between 5:00 am and 11:00 am.

Dr. Shafer saw claimant again on August 14, 2009, with claimant reporting continued cervical neck strain with headaches and a history of migraines, which the doctor was unaware of at the first visit. Claimant reported going to the emergency room at Salina Regional Health Center for migraines on several occasions from August 5, 2009 to December 12, 2010. The August 5, 2009, visit was for the overdose of his pain medication for his migraines, above discussed. The other visits were necessitated by more migraines.

Dr. Shafer opined that claimant had psychosocial issues (a result of the accidental overdose), and a history of ADHD. Dr. Shafer opined that, with the overdose, there are psychological behavioral things going on and "if, indeed, he has a history of ADD, which

he did, then there's often issues with that condition".[2] A nonnarcotic pain reliever was prescribed. Claimant was returned to regular work duty.

Over the course of his treatment, several medications were tried to relieve claimant's headaches, all of them with negative side effects. Dr. Shafer decided that it was best for Dr. Davis, a neurologist, to take over claimant's treatment since Dr. Davis treated claimant when he came in for his overdose. Dr. Shafer did not feel that claimant was trying to kill himself, but purposely took over the prescribed amount because he wanted to feel better.[3] Dr. Shafer has not seen claimant since August 28, 2009. He opined that as long as claimant has no headaches he is able to work regular duty without restrictions.

Claimant acknowledged at the regular hearing that he has suffered headaches since middle school, but not so bad that he had to go to the hospital. However, at his earlier deposition, claimant had denied having a history of headaches.[4]

Dr. Trent Davis, a neurologist, became claimant's authorized treating physician at the time of the admission for the overdose. The last time claimant saw Dr. Davis was July 30, 2010. Claimant never had to go to the emergency room for a migraine while under the care of Dr. Davis.

Claimant first saw Dr. Davis on August 5, 2009, at Salina Regional Health Center for a consultation after being admitted for overdosing on his pain medication. In his conversation with claimant and review of the medical records, Dr. Davis found that initially claimant's history suggested that his headache symptoms began after an industrial injury on June 29, 2009. But additional history suggests that may not be the only factor. He noted that claimant's headaches have been frequent, but not continuous since the accident. He also noted the claimant has photophobia, nausea, and occasional vomiting with his headaches and also some double vision. Claimant also reported some neck pain since the accident. Although claimant takes medication for his headaches it leaves him unable to work. Claimant reported that he averaged one or two headaches a month.

Dr. Davis noted that in 2008 claimant began to have syncopal episodes and would find himself sleepwalking and suddenly waking up on the ground not knowing what happened. Claimant reported having at least 10 of these episodes during the year, with the last being in January of 2009. Claimant also suffered a back injury in 2007.

Dr. Davis examined claimant and ordered tests, including cervical spine x-rays and an electroencephalogram (EEG). The results came back normal and claimant was

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[2] Shafer Depo. at 10.

[3] *Id.* at 12-13.

[4] R.H. Trans. at 46.

prescribed Depakote for headache and seizure control. Dr. Davis also prescribed Maxalt to help if a migraine started. Claimant was allowed to return to work on August 11, 2009, with the restriction of no driving.

When claimant met with Dr. Davis on October 2, 2009, he was still having headaches, averaging one a week. But they were not as severe as they had been. Claimant reported that the headaches seemed to come on more on the days after he had exerted himself. Claimant was told to cut his caffeine consumption. However, when claimant tried to reduce his caffeine intake by reducing the number of sodas he drank per day, his headaches increased. Dr. Davis also decided it was time to take claimant completely off the Depokote. He had been weaning claimant off of the Depokote for about a month.

By February 2010, claimant's headaches were gone, but the Topomax he was taking was making claimant mentally slow. He was forgetting things and he felt like his brain was moving in slow motion. Dr. Davis determined that claimant was not tolerating the Topomax and decided to start tapering him off. As a result, claimant's headaches began to occur more frequently and the Maxalt was not helping. Dr. Davis decided to start claimant on two new medications. Claimant took them for a while and again developed side effects. Dr. Davis' course was to continue to try several different medications on the claimant until they found some that worked well with no side effects, but he didn't see claimant again. On July 30, 2010, claimant was released PRN with no restrictions. Claimant never returned to Dr. Davis for additional treatment, even though Dr. Davis continues to be designated as the authorized treating physician.

Dr. Davis opined that the claimant had a post traumatic aggravation of a migraine headache condition as a result of the June 29, 2009 incident.[5] He testified that it is hard to judge the intensity of the headaches before the injury versus after the injury, but frequency is a hard measure that can be counted. During the course of Dr. Davis' treatments, claimant never had to seek treatment in an emergency room for his headaches.

Claimant continued to work after the accident. His last day of work for respondent was September 14, 2009. He was terminated for missing too many days of work due to the headaches from the accidents. Claimant testified that after July 30, 2010, he tried to get another appointment with Dr. Davis, but was not able to because he had an unpaid bill. However, claimant testified at his deposition on July 27, 2011, that he had not been denied an exam with Dr. Davis because of an unpaid bill.[6]

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[5] Davis Depo. at 24.

[6] R.H. Trans. at 41.

Dr. Davis testified that to his knowledge there was never an occasion where his office refused to see the claimant when he called for an appointment because he sees enough people without money that one more is not going to break the bank.[7] He opined that it is not office policy to refuse to see someone just because of lack of payment.

Claimant testified that he continues to have headaches once or twice every two months and is unable to work during that time. He also can't watch tv or drive when these headaches occur. Claimant testified that he only went to the hospital when the headaches were debilitating to the point where he couldn't function. Things that trigger the headaches are peanuts and chocolate. These same triggers caused claimant to have headaches before the accident.

On December 12, 2010, claimant was in the emergency room again for another migraine and on May 5, 2011, claimant was taken to the emergency room in Kansas City after having a migraine at his brother's graduation. On August 25, 2011, claimant had a migraine at work and had to leave early. He again went to the emergency room. Claimant was working for Outlaw Cycles as a motorcycle mechanic at the time. His job was to change oil filters and check fuel filters. Claimant does not know what triggered this migraine. However, the recommended avoidance of fumes by Dr. Abrams does raise a suspicion.

Claimant testified that his headaches aren't like the ones he used to have before the accident where he could take Excedrin and go to sleep.

Claimant has a history of syncopal episodes and would find himself walking and then suddenly waking up on the ground. Claimant was also suspected of having tonic clonic seizure activity stemming from a 2002 bicycle accident which caused him to lose consciousness.

Kari Gatewood, a claims examiner through Sedgwick CMS, testified that she was assigned to claimant's claim on August 18, 2009. There was no reason to believe that the accident was not work-related, but she had a question about the cause of claimant's current symptoms. She testified that the claim had been classified as a medical-only claim, which meant there was no time loss and there were no indemnity payments. In mid August 2009, the claim was reclassified and assigned to a medical case manager, Deborah Kite.

There was an attempt to contact claimant to discuss items in his medical records in order to determine if his claim was compensable. When claimant did not respond to phone calls or letter, he was notified that his claim was being denied. Claimant finally made contact on September 25, 2009, he was interviewed and treatment was authorized. Authorization for prescriptions was not given until October 2009. Ms. Gatewood testified

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[7] *Id.* at 26.

that she was not aware at the time that claimant's headaches and neck pain had come on more strongly since the accident when she wrote the letter denying compensation.

Debra Kite, a medical case manager for Genex Services, testified that she was assigned to claimant's claim with Schwan's on August 17, 2009. She closed claimant's case on August 25, 2010. She testified that while she handled claimant's claim, he had two authorized physicians, Dr. Trent Davis, a neurologist and Dr. Jane [sic] Shafer, Schwan's company physician.[8]

Ms. Kite was in charge of monitoring claimant's medical treatment with Dr. Davis and discussed everything with the doctor and his nurse. Claimant's treatment with Dr. Davis ended in July 2010, and no one contacted her about more appointments with the doctor after August 25, 2010.

Claimant's family physician at ComCare, Larry Burnett, M.D., testified that he has been claimant's physician since claimant was four or five years old. He testified that claimant has had a history of headaches since middle school.

Dr. Burnett's records indicate that claimant had a bike accident in May 2002, where he lost consciousness after he struck his right temple region of his scalp and/or skull. Claimant's headaches became worse after this accident.

On November 28, 2008, claimant went to see Dr. Burnett, specifically with a complaint of headaches that were more frequent and continued to get worse with episodes of loss of responsiveness from the headaches.[9] Dr. Burnett thought this was tonic-clonic activity and ordered an electroencephalogram, which was reported as negative. This increase in frequency and severity was seven months before claimant's accident in June 2009 while working for respondent.

Dr. Burnett testified that he did worry about claimant's headaches and the possibility that he was having seizures. This raised a concern regarding the risk to others if he were driving. He ordered tests to make sure that claimant did not have a seizure disorder. The tests were normal. Dr. Burnett has not seen the claimant since his work accident in June 2009.

At respondent's request, claimant met with board certified neurological surgeon Paul Stein, M.D., for an IME on October 22, 2010. Claimant's chief complaint was headaches. Dr. Stein noted claimant's history of migraine headaches since claimant was 13 years old.

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[8] Kite Depo. at 4.

[9] R.H. Trans. at 46-47.

Prior to his work injury claimant had not taken medication on a regular basis for those headaches.

Dr. Stein opined that based on the information available to him there has been a permanent or at least a long-term aggravation of claimant's previous headaches and that the current headaches are post-traumatic in nature.[10] Dr. Stein also suspected that claimant had a seizure disorder, but all testing came back normal. He did not relate claimant's syncope episodes to the work accident.

He opined that claimant was going to require a physician authorized to monitor and provide claimant with the appropriate medication for post-traumatic headaches. He went on to opine that claimant has a 5 percent whole person impairment. He did not assign any permanent work restrictions, but opined that claimant may require the ability to leave work or not come to work on occasion because of severe headaches. He opined that claimant's unusual episodes of loss of consciousness began in 2008, prior to the work incident and therefore are not related to the work incident.[11]

Dr. Stein opined that it is likely that claimant would not have had to make the December 12, 2010, May 6, 2011 and August 31, 2011, trips to the emergency room had he followed up with Dr. Davis, the authorized treating physician, or been under the appropriate care and been taking the proper medication like he was supposed to.[12] He did opine that it would be reasonable to seek treatment at the emergency room if he didn't have authorized medical care.[13]

At the request of his attorney, claimant met with Dr. Bernard Abrams, a board certified neurologist, who restricts his practice to patients with diseases or injuries of the brain, spinal cord, nerves and the muscles of the body, for a consultation on December 21, 2009. At that time, claimant's chief complaint involved aggravated migraines. Dr. Abrams opined that claimant's migraine headaches were triggered by a concussion on June 30, 2009. He concluded that claimant was in urgent need of continued medical care including prescription medications and dietary supplements due to his weight loss from Topamax. Dr. Abrams testified that, within reasonable medical certainty, claimant's head injury was the prevailing cause of the exacerbation of claimant's migraine headaches and neck pain.[14]

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[10] Stein Depo., Ex. 2 at 5 (Dr. Stein's Oct. 22, 2010 IME report).

[11] *Id.*, Ex. 2 at 5 (Dr. Stein's Oct. 22, 2010 IME report).

[12] *Id.* at 11-12.

[13] *Id.* at 20.

[14] Abrams Depo., Ex. 2 at 5 (Dr. Abrams Dec. 22, 2009 report).

Claimant met with Dr. Abrams again on April 13, 2011, at which time he continued to have headaches twice a month and had to be off work at those times. Claimant reported that chocolate, peanuts and painting compounds seem to be triggers for his headaches. He noted that although claimant has been under the care of Dr. Davis, he has been to the ER twice due to financial issues which would not allow him to see Dr. Davis or get his medications. He testified that not having access to the proper treatment would definitely have the claimant going to the ER.[15]

Dr. Abrams concluded that claimant has a post-traumatic migraine disorder and that within a reasonable degree of medical certainty claimant's aggravation of his migraines with transition into post-traumatic migraine was caused by the June 2009 accident.[16] He opined that there was no way of knowing if claimant had a tonic-clonic seizure in June 2009 or went down because he was hit on the head.[17]

Dr. Abrams went on to assign a 7.5 percent permanent partial impairment to the body as a whole. He also felt that claimant was going to require periodic time off work when he has a headache and that he should avoid peanuts, chocolate, snickers and fumes.

Dr. Abrams also reviewed that task list of Dick Santner and determined that claimant could no longer perform 7 of 34 tasks for a 20 percent task loss.

On July 27, 2011, claimant's discovery deposition was taken by respondent. That transcript is not a part of this record. However, several of claimant's responses at that deposition were discussed at the time of the September 7, 2011 Regular Hearing. At the deposition, claimant testified that he had not tried to schedule a follow-up appointment with Dr. Davis since the July 30, 2010 examination. However, at the regular hearing, claimant contradicted himself when he testified that he had tried to schedule an appointment with Dr. Davis but was told that he owed the doctor money and no such appointment could be made. Dr. Davis denies turning any patient away due to funding.

A K-WC E-3, Application For Preliminary Hearing was filed with the Division on March 3, 2010. However, no preliminary hearing was ever scheduled or held in this matter. No other E-3 was ever filed with the Division.

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[15] *Id.* at 47.

[16] *Id.*, Ex. 3 at 2 (Dr. Abrams Apr. 16, 2011 report).

[17] *Id.* at 29.

PRINCIPLES OF LAW AND ANALYSIS

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.[18]

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.[19]

K.S.A. 44-510h(a)(b) states in part:

> (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.
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> (b) (1) If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of three health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this paragraph, either party or both parties may request the director to select a treating health care provider.
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> (2) Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of $500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

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[18] K.S.A. 44-501 and K.S.A. 44-508(g).

[19] *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

K.S.A. 44-534a(a) states in part:

(a) (1) After an application for a hearing has been filed pursuant to K.S.A. 44-534 and amendments thereto, the employee or the employer may make application for a preliminary hearing, in such form as the director may require, on the issues of the furnishing of medical treatment and the payment of temporary total disability compensation. At least seven days prior to filing an application for a preliminary hearing, the applicant shall give written notice to the adverse party of the intent to file such an application. Such notice of intent shall contain a specific statement of the benefit change being sought that is to be the subject of the requested preliminary hearing. If the parties do not agree to the change of benefits within the seven-day period, the party seeking a change in benefits may file an application for preliminary hearing which shall be accompanied by a copy of the notice of intent and the applicant's certification that the notice of intent was served on the adverse party or that party's attorney and that the request for a benefit change has either been denied or was not answered within seven days after service. Copies of medical reports or other evidence which the party intends to produce as exhibits supporting the change of benefits shall be included with the application. The director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and shall give at least seven days' written notice by mail to the parties of the date set for such hearing.

(2) Such preliminary hearing shall be summary in nature and shall be held by an administrative law judge in any county designated by the administrative law judge, and the administrative law judge shall exercise such powers as are provided for the conduct of full hearings on claims under the workers compensation act. Upon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation to be in effect pending the conclusion of a full hearing on the claim, except that if the employee's entitlement to medical compensation or temporary total disability compensation is disputed or there is a dispute as to the compensability of the claim, no preliminary award of benefits shall be entered without giving the employer the opportunity to present evidence, including testimony, on the disputed issues. A finding with regard to a disputed issue of whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. Such review by the board shall not be subject to judicial review. If an appeal from a preliminary order is perfected under this section, such appeal shall not stay the payment of medical compensation and temporary total disability compensation from the date of the preliminary award. If temporary total compensation is awarded, such compensation may be ordered paid from the date of filing the application, except that if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date, temporary total compensation may be ordered paid for all periods of temporary total disability prior to such date of filing. The decision in such preliminary hearing shall be rendered within five days of the

> conclusion of such hearing. Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

The authorization of Dr. Davis in this matter has never been rescinded. Claimant was advised to return on a PRN basis, that is, return if the need arose. Whether claimant actually attempted to schedule an appointment with Dr. Davis is unclear in this record. Claimant contradicts himself regarding the attempted contact with the doctor's office. Additionally, the doctor apparently had a practice of not denying medical care on the basis of one's ability or inability to pay. Finally, the procedure for obtaining medical treatment is clearly set forth in K.S.A. 44-534a. An application for a preliminary hearing was filed by claimant but never pursued. There is no explanation in this record as to why claimant failed to request medical treatment. It is significant that claimant never went to an emergency room while under the care of Dr. Davis. That extent of medical treatment success would have encouraged continued use of Dr. Davis' availability. As noted in the award, the necessity of the emergency room visits on December 12, 2010, May 6, 2011 and August 25, 2011, were created by claimant's failure to avail himself of the authorized care under Dr. Davis. The denial of claimant's request for payment of those emergency room bills is affirmed.

CONCLUSIONS

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant is not entitled to payment for the above noted emergency room visits as an authorized health care provider was available at all times to provide treatment for claimant's headaches. It is unclear why claimant did not make a legitimate attempt to return to Dr. Davis for authorized care. It is found that claimant never actually contacted Dr. Davis. The only E-3 ever filed with the Division resulted in no action by claimant. No preliminary hearing was ever held. The proper procedure for obtaining additional medical treatment was never attempted.

Claimant would be entitled to the $500.00 unauthorized medical allowance under K.S.A. 44-510h(b)(2) should he elect to pursue same.

The Award sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The Board adopts those findings and conclusions as its own.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated January 3, 2012, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2012.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

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Bruce E. Moore, Administrative Law Judge